

Legal alert: New legal framework for payment services providers.

On 25 February, 2010 Saeima has adopted Payment Services law (the "Law"). Law is adopted to comply with Directive 2007/64/EC on payment services in the internal market and it lays down the rules which are applied to payment service providers and regulates relations between payment service providers and payment service users. The Law enters into force on 31 March, 2010. The Law provides regulation of authorization and operations of payment service providers. Law defines rights of payment service users to information, inclusion of certain provisions in agreements as well as prescribes the procedure and terms for payment execution.

The main provisions of the Law are as follows:

- The Law defines payment services as transferring money to a payment account, withdrawing money from a payment account, providing of direct debit services, cards and similar payment instruments, issue of payment instruments, money remittance, execution of payment transactions using means of distance communication;
- Payment services may be executed by: banks, electronic money institutions, postal services providers, the European Central Bank, the Bank of Latvia or other national banks if their activities are not connected with execution of monetary policy or other activities of public person, institution of direct administration or derived public person when its activities are not actions of public person, and also payment institution licensed in the Member State of European Union or European Economic Area, which perform its activities in Latvia in accordance with the Law.
- Payment service providers (payment institutions) are supervised by the Financial and Capital Market Commission.
- The Law provides dual regulation regarding granting authorization to payment service providers (payment institutions) – licensing or submission of a notice to the Financial and Capital Market Commission. The notice regarding commencement of payment institution's activities shall be submitted to the Financial and Capital Market Commission if the expected mean value of payment transactions does not exceed three millions euro within one year. In other cases the license shall be received before the execution of payment services. The Law does not foresee transitional provisions that would define the procedure for licensing or notification for merchants, which already render payment services.
- The Law provides regulation of acquisition of significant influence (by shareholding or otherwise) in payment institutions and notifying the Financial and Capital Market Commission about such influence.
- The Law provides regulatory framework for payment institutions' activities, namely, the amount of initial and its capital of licensed payment institutions, defines which services payment institutions are eligible to render in addition to payment services as well as states credit granting provisions.
- At the same time the Law also defines certain rules to be taken into account in relations between payment institutions and payment service users. Those include data protection of persons, accounts and transactions, and restrictions regarding provision of information to third persons about service users.
- The Law contains division of payment service users depending on whether they are classified as consumers within the meaning of the Consumer Rights Protection Law. Payment institutions shall observe stricter provisions regarding provision of information, agreement conditions and liability regarding consumers. The Law provides an option for payment institutions to agree with merchants not to apply provisions aimed at consumer protection.
- Division of consumers and merchants is valid also in the context of the procedure for reviewing of out-of-court complaints about operations of payment institutions. Merchants are eligible to submit complaints to the Financial and Capital Market Commission, whereas consumers - Consumer Rights Protection Centre. However, both institutions are entitled not to initiate an administrative procedure if the activity of a respective payment institution is not considered as a violation which has caused or could have caused significant harm to collective interests of service users. At the same time payment services users have rights to turn to the Ombudsman of Association of Latvian Commercial Banks, which is entitled to recommend to payment services provider to compensate damages caused to the user of the services. Payment services users are also entitled to bring proceedings before a court without using out-of-court procedure.
- Payment institutions are obliged to provide for consumers free of charge information about payment services and about payment execution. Law states compulsory information that shall be included in agreements with consumers and states obligation to payment institutions to compensate damages which caused by not-authorized or incorrectly executed payment. Transitional provisions state that payment service providers shall ensure framework agreements' compliance with Law till 01.06.2010. At the same time the Law foresees rights to payment service users to claim for repayment of executed payment if prior authorization has been made (for example, automatic payment) and criteria defined by the Law are met.

Main activities that should be performed by merchants who render payment services in context with applying of Law:

- To evaluate whether their business activities correspond to the definition payment services provided by the Law and whether the license for business activities is necessary or it is necessary to notify the Financial and Capital Market Commission.
- To evaluate agreements with payment services users and to ensure their compliance with the provisions of the Law till 01.06.2010.
- To ensure that the duty to inform the consumers about the payment services can be carried out in accordance with the provisions of the Law.
- To perform assessment of the possible risks resulting from duty to compensate damages and to adopt internal procedures and regulations for mitigation of the risks.

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